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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 510-511

IN THE MATTER OF
CHICAGO RAILWAYS COMPANY, ET AL.,
DEBTORS.

CHICAGO TRANSIT AUTHORITY,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND JOHN E. SULLIVAN, LIQUIDATING TRUSTEE, ETC.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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The basic question in the case is this: Are the taxes on the property purchased by a municipal corporation abated as of the day of purchase even though already assessed against a private owner—the private owner having become liable for the taxes before the property was purchased by the municipality?

In every State where this question has arisen the taxes have been abated for that portion of the year in which

the property was owned by the municipal corporation—in most cases even where the lien for taxes had already attached; but in every case where, as here, no lien had attached the tax has without exception been abated.

We pointed out that the cases which do not permit the abatement of taxes as to a tax exempt purchaser involved only religious, educational or other private institutions, not municipal corporations. Wherever the point has arisen, a different rule has been applied to municipal corporations and the tax abatement allowed. In our petition we showed that the Court of Appeals failed to follow this rule. While we could not and did not say that the court ignored the express Illinois law—since Illinois has yet to pass on municipal corporation tax abatement—we emphasized that in promulgating its law for Illinois the Court of Appeals made up its own rule which is contrary to that of every other jurisdiction throughout the country where the question has been decided.

What do respondents offer as an answer? They ignore and are unable to answer the point that no lien had attached to the properties here before they were purchased by petitioner, a fact which, in addition to the municipal corporation feature, further distinguishes the Illinois cases cited by respondents. In the absence of a prior lien no court in any jurisdiction has denied abatement of taxes after acquisition of the subject property by a municipality.

Respondents argue that no claim for taxes is made against petitioner. We have made no secret of that fact. But respondents have not denied that the necessary effect of taxing the Trustee for the full year would be to tax petitioner for one-fourth of the year. The proration provision of the Plan of Reorganization, which brings about this taxation effect, was not the voluntary matter which respondents attempt to depict but was a component of the

Plan which petitioner could not avoid. Furthermore, the cases which have abated all or part of a year's taxes as to a purchasing municipality have not been based on whether the liability for taxes was voluntary or involuntary. If the net effect—direct or indirect—of not abating the taxes would be to impose them on the purchasing municipality, abatement was allowed. That is the case here. The net effect of taxing the Trustee would be also to tax petitioner. Respondents have no answer for this.

Respondents cite numerous Illinois cases holding that the tax exemption of a municipal corporation is to be strictly construed. None of those cases are in point because they decide only the question whether or not the municipality had an exemption or whether the properties sought to be taxed were within the municipality's exemption. Neither of those matters are involved here. Admittedly, petitioner has a tax exemption which applies to all its property. (Ill. Rev. Stats. 1947, ch. 120, par. 500, sub-par. 13; *People* v. *Chicago Transit Authority,* 392 Ill. 77, 94.) The question here is when does that exemption take effect? The many cases cited by respondents on strict construction do not purport to pass on this question.

The Illinois statute, which makes the owner on April first liable for the year's taxes, is no answer to the problem of abatement. The purpose of this statute is to fix the year's tax liability to the State as between successive private owners. It does not decide whether there may be an abatement when property is purchased during the year by a tax-exempt municipal corporation.

The other arguments of respondents require little comment. Petitioner is not seeking a retroactive exemption but only exemption for that portion of the year during which it owned the properties—the same type of exemption which has been granted to other municipal corpora-

tions under similar circumstances in every state where the question has been adjudicated.

We shall make no attempt separately to answer the brief of respondent Trustee since the brief of the State of Illinois covers the same ground and more. Furthermore, the Respondent Trustee has no interest whatsoever in the outcome of this case one way or the other. His continued participation in this litigation remains an unsolved mystery.

Respectfully submitted,

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